

A-580-816
New Shipper Review
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DATE: June 13, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Certain Corrosion-Resistant Carbon Steel Flat Products from the
Republic of Korea: New Shipper Review of Haewon MSC Co.,
Ltd.

SUBJECT: Issues and Decisions for the Final Results of the New Shipper
Review of the Antidumping Duty Order on Certain Corrosion-
Resistant Carbon Steel Flat Products from the Republic of Korea
(Final Results)

Summary

We have analyzed the case and rebuttal briefs submitted by domestic interested parties and respondent.¹ As a result of our analysis, we have made changes from the Preliminary Results in the margin calculations. We recommend that you approve the positions described in the Discussion of Interested Party Comments, sections A and B, infra. Outlined below is the complete list of the issues in this review for which we have received comments from the interested parties.

I. Background

¹ Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondent: On February 22, 2008, United States Steel Corporation (US Steel), and Nucor Corporation (Nucor) (collectively, petitioners) filed case briefs (respectively, US Steel's Case Brief, and Nucor's Case Brief). On February 29, 2008, US Steel, and Nucor filed rebuttal briefs (respectively, US Steel's Rebuttal Brief, and Nucor's Rebuttal Brief). On February 22, 2008, Haewon MSC Co. Ltd. (Haewon) filed a case brief (Haewon's Case Brief). On February 29, 2008, respondent filed a rebuttal brief (Haewon's Rebuttal Brief).

The Department of Commerce (the Department) initiated this new shipper review of the antidumping duty order on certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for respondent, Haewon MSC Co. Ltd. (Haewon). See Corrosion-Resistant Carbon Steel Flat Products from Korea: Notice of Initiation of Antidumping Duty New Shipper Review for the period August 1, 2006, through January 31, 2007, 72 FR 14260 (March 27, 2007). On August 30, 2007, the Department published the extension of the time limits for the Preliminary Results of this new shipper review. See Corrosion-Resistant Carbon Steel Flat Products From Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty New Shipper Review, 72 FR 50099 (August 30, 2007). On January 23, 2008, the Department published the Preliminary Results of this administrative review. See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of Antidumping Duty New Shipper Review, 73 FR 3925 (January 23, 2008) (Preliminary Results). This review covers one manufacturer/exporter of the subject merchandise: Haewon.

II. List of Comments

Whether to Rescind the Review

Although Comments 1 through 6 relate to a variety of different topics; they all address the issue of whether it is appropriate to continue the review.

- Comment 1: Circumvention of the New Shipper Review
- Comment 2: Arm's-Length Transaction Between Parties
- Comment 3: Haewon's Future Sales
- Comment 4: Quantity and Value of Haewon's Sale to the United States
- Comment 5: Timely Filing of the New Shipper Review
- Comment 6: COP/CV Data for an Inappropriate Period

COP Issues

- Comment 7: Revision of Haewon's General and Administrative (G&A) and Interest Expense Ratios to Account for Tolling
- Comment 8: Whether to Recalculate Interest Expenses
- Comment 9: Revised Selling, General, and Administrative (SG&A) Expenses from Verification

III. Discussion of Interested Party Comments

- Comment 1: Circumvention of the New Shipper Review

The petitioners contend that if the Department makes its decision in this review based on Haewon's U.S. sale, the result will be to allow Haewon to "circumvent" the antidumping order.² Specifically, the petitioners assert that the Department did not address substantial record evidence indicating that Haewon's U.S. "distributor" is not a viable business entity and is simply part of Haewon's attempt to circumvent the antidumping duty order.

Haewon argues the petitioners have not explained exactly how they think this circumvention will occur. Haewon states that this review will have two consequences. First, Haewon states that it will set the amount of duty that Haewon's U.S. distributor has to pay on its import of the subject merchandise it purchased from HMSC during the review period. And, second, it will establish a cash deposit rate for HMSC's future sales until the next review of HMSC is completed.

Haewon asserts that this review will not lead to the exclusion of Haewon from the scope of the antidumping order; rather, once this review is completed, Haewon will be subject to the antidumping order in exactly the same manner as every other Korean producer and exporter. Haewon states that the petitioners will have the option of requesting an administrative review of HMSC's U.S. sales every year during the anniversary month of the antidumping duty order. If a review is requested, and the review finds that HMSC has engaged in dumping, then the importer of HMSC's merchandise will have to pay antidumping duties equal to the amount of any dumping found (plus interest, if the final duties exceed the amount of the deposit posted at the time of entry), and the cash deposit rate for future imports will be adjusted to reflect the dumping margin found in the review. Therefore, Haewon argues that, in these circumstances, the petitioners have no basis for their complaint. Furthermore, Haewon states that the petitioners can ensure that HMSC's future sales are scrutinized by the Department by simply requesting an administrative review of Haewon.

Haewon's rebuttal comments regarding the petitioners' claim that Haewon's U.S. distributor is not a viable entity are discussed further in Comment 2.

Department's Position:

We agree with Haewon. As a result of supplemental questionnaires and verification, the Department obtained and considered detailed information regarding Haewon's relationship with its U.S. distributor. Although Haewon's U.S. importer did not report having a significant amount of experience in the distribution of CORE from Korea, we find it reasonable for a party with the particular importer's background to enter this particular line of business. Specifically, Haewon's U.S. importer has existing relationships with Korean steel manufacturers which are based on a similar line of business. Moreover, the Department did not find any evidence to conclude that Haewon's U.S. importer was affiliated with the final customer. Our analysis shows that this sale does not fall outside normal business practice or is otherwise commercially unreasonable. Based upon our verification of Haewon's data, we have no evidence to question

² See Nucor's Case Brief at 2.

whether Haewon's U.S. distributor is a viable business entity. Nor do we have any basis to conclude that circumvention has occurred. See also the Department's positions for Comments 2 through 6 below.

Comment 2: Arm's-Length Transaction Between Parties

The petitioners argue that Haewon's and its U.S. distributor's responses to the Department's questionnaires were inconsistent.³ The petitioners argue that Haewon repeatedly stated that its first contact with its unaffiliated U.S. distributor came when its U.S. distributor's representative visited Korea in December 2006⁴ and that Haewon had no telephone or e-mail correspondence with its U.S. distributor other than a telephone confirmation of its order.⁵ The petitioners state that Haewon reported no agreements with its U.S. distributor other than the single U.S. sale.⁶

The petitioners argue that only after it filed intensive deficiency comments and the Department issued supplemental questionnaires did Haewon and its U.S. distributor report that there had been additional contacts and dealings between them. The petitioners further comment that both parties also stated that the U.S. distributor would be Haewon's U.S. subsidiary and "act as the importer of record for future sales to the United States."⁷ In addition, Haewon first disclosed that the parties had discussed "the possibility of employing the {U.S. distributor} in the future."⁸ The petitioners claim that these admissions directly contradict Haewon and its U.S. distributor's previous responses, which were submitted after June 2007, asserting that the two parties did not have any agreements with each other, did not have plans to do business together, and did not extensively communicate with each other.

The petitioners assert that the Department has applied Adverse Facts Available (AFA) to respondents that provided "confusing, contradictory, and false responses" when they could have clearly communicated the material facts.⁹ The Department has also applied AFA where the exporter intentionally failed to adequately disclose its producer and business relationships,¹⁰ and where the respondent failed to adequately respond to allegations of affiliation.¹¹ Because

³ Id. at 8-11.

⁴ See Haewon's October 29, 2007, Supplemental Questionnaire Response at 6-7 (Public Version) (Haewon's October 29, 2007 Response).

⁵ See Id.

⁶ See Haewon's October 5, 2007, Supplemental Questionnaire Response at 4 (Haewon's October 5, 2007 Response).

⁷ Id.

⁸ Id.

⁹ See Gerber Food (Yunnan) Co. v. United States, 491 F. Supp. 2d 1326, 1343 (CIT 2007).

¹⁰ See Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1345 (CIT 2005).

¹¹ See Chia Far Indus. Factory Co. v. United States, 343 F. Supp. 2d 1344, 1364 (CIT 2004).

Haewon repeatedly provided contradictory and evasive responses, along with the questionable timing of Haewon and its U.S. distributor's agreements, the petitioners ask the Department to apply AFA to the affiliation issue and find that Haewon's sale to its U.S. distributor was not made at arm's length, and, therefore, is not a *bona fide* transaction.

Haewon rebuts the petitioners' claims stating that during the Department's verification, the Department found (1) that the owner and operator of Haewon's U.S. distributor had learned about Haewon from its contacts in Korea; (2) that Haewon had been initially approached by its U.S. distributor, which was looking for a supplier of galvanized steel coils; (3) that one of the longstanding Korean customers of Haewon's affiliate Haewon Steel Tech had vouched for its U.S. distributor; and (4) that Haewon made its decision to enter into business with its U.S. distributor based on that reference.¹² Then, Haewon's U.S. distributor placed its order with Haewon only after receiving an order from its unaffiliated U.S. customer.¹³

Haewon explains that during the Department's verification of Haewon, the Department verified that both companies did not own any shares in one another, share directors, or officers. Moreover, it did not have any common owners and had no dealings with one another at any time prior to the transaction at issue, or at any time subsequent to that transaction.¹⁴

During the course of this proceeding, Haewon argues that the petitioners suggested that the sale from Haewon's U.S. distributor to its customer might never have occurred, and that there was no evidence that the merchandise ever left Haewon's U.S. distributor's possession.¹⁵ In response, Haewon claims that its U.S. distributor submitted copies of (1) the invoice from them to its customer, (2) the invoice to Haewon's U.S. distributor from the forwarding agent for transportation from the port of entry, (3) the bills of lading for the shipments from the port of entry, and (4) the bills of lading for the shipment from to the ultimate destination of the merchandise.¹⁶ In these circumstances, Haewon states that it is clear that the price that Haewon charged to its U.S. distributor was consistent with U.S. market prices, as reflected by the price that its U.S. distributor charged its customer for the same merchandise. Thus, Haewon explains that there is no reason to believe that Haewon's sale price was unfairly inflated, or that its sale to its U.S. distributor was not a *bona fide* transaction.

Department's Position:

The Department examined the issue of affiliation through supplemental questionnaires issued to both Haewon and its U.S. importer. The Department subsequently reviewed the nature of Haewon's business relationship with its U.S. distributor and final customer and collected

¹² See Sales Verification Report at 7-8.

¹³ See McKenna Long and Aldridge's November 30, 2007, submission at 12.

¹⁴ See Haewon's October 26, 2007, Submission at 10.

¹⁵ See Nucor's December 11, 2007, Submission at 3.

¹⁶ See Haewon's December 21, 2007 Submission at 3, n.1.

supporting documentation for Haewon's U.S. sale during the Department's verification of Haewon in November 2007. We have considered the affiliation issues raised by the petitioners, and we find that the petitioners have provided no evidence to demonstrate that Haewon's U.S. customer is affiliated. The petitioners refer to Haewon's development of a U.S. subsidiary and assert that Haewon's statements regarding this issue have been evasive. However the Department disagrees with the petitioners' assertion. Specifically, we find that Haewon was responsive in reporting its agreements and business relationships that pertain to the POR and the U.S. sale in question. Furthermore, we find that Haewon's incorporation of a U.S. subsidiary took place outside of the POR; therefore, the impact of this development is not relevant to this segment of the proceeding.

The petitioners reference certain cases where the Department has applied AFA in instances where (a) respondents provided "confusing, contradictory, and false responses," (b) the exporter intentionally failed to adequately disclose its producer and business relationships, and (c) where the respondent failed to adequately respond to allegations of affiliation. However, those cases are not applicable here because we find that Haewon was adequately responsive to the Department's questions regarding its affiliates. Haewon initially stated that it could not provide certain details regarding its U.S. sale such as the price paid by the ultimate customer of the U.S. sale or its end-use application. However, the Department subsequently issued a supplemental questionnaire directly to the U.S. importer and found that its responses, submitted on behalf of Haewon, were forthcoming and provided sufficient detail for the Department to adequately assess whether or not the U.S. sale transaction was made at arm's length. Moreover, we find that the issue of applying AFA to Haewon is moot due to the fact that the Department has found Haewon's U.S. sale to be a commercially reasonable, *bona fide* transaction.

In conclusion, we found that Haewon's U.S. sale was a *bona fide* transaction between two unaffiliated parties. The record does not contain factual information to support a finding that these parties are affiliated. Moreover, the petitioners' arguments form no basis for the Department to find that the aforementioned parties are affiliated. The Department disagrees with the petitioners' allegation that Haewon inadequately disclosed its business relationships and that its responses to the Department's numerous supplemental questionnaires were contradictory and evasive. Therefore, for these final results, we find Haewon's U.S. sale is an arms-length transaction and a *bona fide* sale.

Because the remaining discussion on this issue is considered business proprietary information (BPI), please see the Department's April 14, 2008 memorandum in the Central Records Unit (CRU), Room 1117 of the main Department of Commerce building, entitled, "Final Results Calculation Memorandum" (final results calculation memo) for further discussion.

Comment 3: Haewon's Future Sales

The petitioners argue that Haewon's U.S. sale was not made for normal commercial considerations and is not typical of the company's future selling practices. The petitioners assert that Haewon's U.S. distributor's "primary business is the purchase of second-hand/used steel

industry machinery.”¹⁷ In fact, the company has admitted that it “has only a single and sole transaction of importing the merchandise under review, and has neither attempted nor experienced any prior dealings in that merchandise.”¹⁸ In addition, the petitioners state that Haewon’s U.S. distributor has also made no subsequent purchases of the subject merchandise since the U.S. sale which is the subject of the instant review.¹⁹

Nevertheless, the petitioners argue that Haewon and its U.S. distributor have asserted that Haewon’s U.S. distributor’s actions are not unusual for a company entering a new line of business.²⁰ However, the petitioners assert that a distributor starting up a new line of business normally must advertise and make its name widely-known to develop the new line of business and attract customers.

The petitioners explain that, not only does Haewon’s U.S. distributor have no previous experience with the subject merchandise, it has taken no steps to develop such experience or advertise its launching of a new “distribution” business and does not have the facilities typically required to undertake such a business. Thus, the petitioners believe these facts demonstrate that the U.S. sale is atypical of normal commercial considerations and hence, not *bona fide*. In addition, the petitioners’ claim that Haewon’s U.S. distributor also failed to follow good business practices. To comply with applicable legal requirements and to establish a reputation as a reliable party to do business with, it is critical that a company be properly registered with the relevant government authorities. According to the petitioners’, as the Department has found, failure to do so demonstrates that a company does not operate in accordance with “good business practices” and normal commercial considerations.²¹

The petitioners assert that Haewon’s U.S. sale is not typical of its future selling practices. In this case, Haewon and its U.S. “distributor” have provided a very clear indication of what Haewon’s future selling practices will look like, and the petitioners assert that it is different from Haewon’s selling practices in the instant review. Specifically, the petitioners reference Haewon’s development of a subsidiary in the United States and the relationship used in the formation of this subsidiary.

Haewon rebuts the petitioners’ argument and states that it is still in the process of trying to figure out how best to structure its U.S. sales in the future. As part of that process, Haewon

¹⁷ See McKenna Long and Aldridge’s November 20, 2007’s Response to the Department’s Nov. 9, 2007 Questionnaire.

¹⁸ *Id.* at 6 (Public Version).

¹⁹ See Haewon’s October 26, 2007, Supplemental Questionnaire Response (Haewon’s Oct. 26, 2007, Supplemental Response”) at 10 and McKenna Long and Aldridge’s November 20, 2007’s Response at 6.

²⁰ See Haewon’s and its U.S. distributor’s Joint Response to Petitioner’s December 10, 2007, Submission of New Factual at 5-6.

²¹ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 16.

explains that it asked the owner of its U.S. distributor in June of 2007 to perform the ministerial act of filing incorporation papers for a U.S. company. However, it claims that no further actions have been taken to establish operations for that company. Haewon asserts that it has engaged in discussions recently about the possibility of employing its U.S. distributor in a U.S. subsidiary in the future in some capacity. However, Haewon refutes the petitioners' claim that it has not yet reached a final decision on this issue, and it has not made any offers of employment to its U.S. distributor.

Haewon comments that the petitioners contend that these actions call into question the *bona fide* nature of Haewon's U.S. sale. Haewon describes that its U.S. sale was concluded in January of 2007. Haewon claims that it did not ask its U.S. distributor to incorporate the U.S. company, until June 2007 — that is, five months later. Moreover, Haewon states that the discussions about the possibility of hiring its U.S. distributor to work in a U.S. subsidiary of Haewon did not occur until several months after that.²²

The critical point, Haewon argues, is that its unaffiliated U.S. distributor did not take any actions in the United States on its behalf, and Haewon did not have any discussions with its U.S. distributor about working at a U.S. subsidiary of Haewon at any time that was relevant to the negotiation and consummation of Haewon's sale to its U.S. distributor in January 2007. Thus, Haewon explains, whatever its future plans may be, it does not provide a basis for questioning the *bona fides* of a transaction that occurred at least five months before Haewon took any steps to further those plans.

Department's Position:

The Department agrees with Haewon. We do not find that the issues raised with respect to Haewon's U.S. distributor preclude the Department from finding that the U.S. sale is *bona fide*, because we have examined the relevant issues based on the totality of the circumstances of Haewon's U.S. sale. Specifically, the Department does not find that the lack of a website or other forms of advertising is a significant factor that would render Haewon's U.S. sale commercially unreasonable. In addition, the Department finds that the size of the U.S. distributor's facilities is not unreasonable, given the fact that it is entering a new line of business. Furthermore, Haewon reported the corporate registration of its U.S. distributor to the Department in its supplemental questionnaire response.

The petitioners' speculation about future employment and affiliation between Haewon and its U.S. distributor does not mean that they were affiliated during this new shipper review. There is no evidence on the record showing that Haewon and its U.S. distributor were affiliated

²² As indicated in Haewon's December 20 submission, those discussions had occurred only "more recently" than the June 2007 incorporation discussion. See Haewon's December 20 Submission at 4.

during the POR.²³ The Department may consider whether a U.S. sale is typical of future sales.²⁴ In this particular case, we have weighed the evidence and considered all of the data on the record. However, we do not find that Haewon's registration of a U.S. entity constitutes significant evidence that warrants rescission of Haewon's new shipper review. Specifically, we found that Haewon incorporated its U.S. company in June 2007, subsequent to the POR, but it has stated that no further actions have been taken to establish operations for that company, because the newly formed entity does not currently have any officers, directors or shareholders; nor does it have any employees or any capital. Furthermore, Haewon has reported that it is currently a completely inactive corporation that consists solely of documents kept at an office. Therefore, the Department cannot speculate as to the impact of this incorporation during the context of the instant review. However, these developments may be thoroughly considered by the Department within the respective period of review covered by a subsequent administrative review or changed circumstance review. Accordingly, the Department does not find that the formation, subsequent to the POR, of the U.S. entity in question renders Haewon's U.S. sale not *bona fide*.

Comment 4: Quantity and Value of Haewon's Sale to the United States

The petitioners assert that the Department should make certain adjustments to the benchmark data used in its quantity, value and AUV comparisons for these final results. The petitioners claim that the U.S. Customs and Border Protection (CBP) data include certain classifications of entries that are not comparable to Haewon's U.S. sale and therefore, inappropriate to compare Haewon's U.S. sale. Due to the proprietary nature of the discussion of this issue, please see the final results calculation memorandum for further discussion.

The petitioners also argue that, when the benchmark data are adjusted, it is clear that the quantity, value and AUV of Haewon's U.S. sale was atypical of normal transactions during the POR. The petitioners argue when the non-comparable shipments are eliminated, Haewon's U.S. sale was in fact the lowest in terms of volume compared with entries of all Korean manufacturers. In the Preliminary Results, the petitioners assert that the Department also compared the value of Haewon's U.S. sale to the total value for all sales aggregated by manufacturer, finding that Haewon ranked in the middle in terms of value. As the petitioners' analysis reveals, when such shipments are excluded, Haewon's ranking drops significantly in terms of value, as compared to other Korean manufacturers.

The petitioners explain the results of its analysis that it conducted after excluding the aforementioned entries in question. Specifically, the petitioners' analysis demonstrates that the AUV of Haewon's U.S. sale is among the highest, as compared to the other Korean manufacturers after excluding the types of entries in question.

²³ See Haewon's Rebuttal Brief at 15.

²⁴ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007).

In regard to the Department's *bona fide* analysis, the petitioners argue that the manufacturers accounting for the two highest AUVs shipped only corrosion-resistant steel classified under different HTS codes than the HTS code reported for Haewon's sale. The petitioners assert because they are comprised of different HTS codes than Haewon's sale, the AUVs for these manufacturers clearly pertain to corrosion-resistant steel which is critically different in ways that affect cost and price from the corrosion-resistant steel entered by Haewon. Therefore, the petitioners assert that a comparison of Haewon's U.S. sale with these manufacturers' sales would not be appropriate.

In addition, the petitioners assert that a comparison of Haewon's U.S. sale to shipments under the same HTS code aggregated by manufacturer likewise demonstrates that Haewon's quantity, value and AUV were atypical. The petitioners state that, in its Bona Fide Analysis Memo, the Department also compared the quantity, value, and AUV of Haewon's U.S. sale to shipments from Korea under the same HTS code as Haewon's U.S. sale.²⁵ As demonstrated above, the petitioners argue that certain entries should also be excluded for these final results because they do not result in an accurate, "apples-to-apples" comparison.

Moreover, for these final results the petitioners state that the Department should apply the same manufacturer-specific methodology which it utilized for its comparisons with all HTS codes covered by the Order. The petitioners explain that such a methodology is required because it takes into account the relative variations in volume and value reported by the respective manufacturers for individual sales and serves to diminish the influence of any relatively low-priced, high volume sales, or any relatively high-priced, low volume sales. In summary, the petitioners assert that the application of the manufacturer-specific methodology reveals that the quantity, value, and AUV of Haewon's U.S. sale were atypical of entries under the same HTS code from Korea during the POR.

Haewon rebuts the petitioners assertions, stating that its single U.S. sale was smaller than the aggregate volumes shipped by other Korean producers over the entire POR and that it was not aberrationally high, as compared to the AUVs of all exports shipped over the entire period.

In addition, Haewon challenges the petitioners' claim by explaining that the Department has the actual price at which the merchandise was resold in the U.S. market by Haewon's U.S. distributor and the paper trail and the ability to track the merchandise after it was sold by Haewon to its customer, and to compare Haewon's price to the U.S. distributor's resale price. Haewon asserts that this information demonstrates that Haewon's U.S. sale price was actually significantly lower than its U.S. distributor's resale price for the same merchandise, and that Haewon's price allowed its U.S. distributor to earn a substantial mark-up on Haewon's U.S. sale.

Haewon explains that during the Preliminary Results, the Department's analysis showed that Haewon's U.S. sale was "comfortably within the range of other commercial transactions,"

²⁵ See the Department's January 15, 2008, "CORE from Korea; Antidumping New Shipper Review of Haewon: Bona Fide Analysis Memorandum," at 6-7 (Public Version) (*Bona fide* Memo).

which is the same data that the petitioners used in their suggestion that the Department exclude the exporters whose aggregate export volumes were smaller than Haewon's or whose AUVs were higher than Haewon's.

In addition, Haewon argues that the petitioners' comparison of an individual transaction for a specific product at a specific point in time with an aggregate volume and average value for a range of products over a longer period is distortive. In this regard, Haewon states that the relevant tariff classification encompasses a range of products with prices that vary significantly, as well as a time period encompassing major fluctuations in the cost of the zinc used to coat the merchandise. Haewon explains that the petitioners' analysis of the aggregate quantity and average value for that range of products over an extended period of time provides absolutely no indication as to whether there were other individual transactions under the same tariff classification that were, in all respects, identical to Haewon's sale.

Haewon states that the subject merchandise comprising its U.S. sale is classified under tariff code HTS 7210.49.00.90. Haewon states that the aforementioned HTS classification encompasses *all* hot-dipped galvanized flat steel products, regardless of the thickness of the coil (or, for that matter, the thickness of the zinc coating). Haewon claims that it has demonstrated that the prices for galvanized coils vary significantly based on the thickness of the coil, with thinner coils having a substantially higher price per ton than thicker coils. Specifically, Haewon states that during verification, the Department reviewed published statistics that listed the following ex-factory prices for galvanized steel coils in Korea in November 2007.

Haewon points out that the 0.4 millimeter product that it exported to the United States was at the thinner end of Haewon's product range and, therefore, Haewon asserts that the price was higher than an average price for all thicknesses of hot-dipped galvanized coils. In addition, Haewon argues that the Department verified that the cost per ton for zinc varied considerably during the review period. Furthermore, Haewon states that December 2007, the month when Haewon was negotiating the sales price with its U.S. customer, represented the month in which the cost of zinc was at its highest point during the POR. Haewon indicated that the cost of zinc can account for a significant share of the total cost of manufacture of Haewon's products, therefore, Haewon asserts that variations in the cost of zinc can have a large impact on the price of the galvanized steel coils.

Haewon rebuts the petitioners' analysis, arguing that the petitioners only compared the price for a single transaction made at a specific point of time to an average value encompassing different products and different time periods, for which prices would be expected to be quite different, without making any attempt to account for the differences.

Department's Position:

The Department maintains its finding that Haewon's U.S. sale is a *bona fide* transaction. The Department agrees in part with the petitioners with respect to the exclusion of certain entries of non-subject merchandise from our *bona fide* analysis. However, as discussed in more detail in

the final results calculation memo, the Department's revised *bona fide* analysis continues to demonstrate that Haewon's U.S. sale was a commercially reasonable, *bona fide* transaction. Based on the Department's revised quantity and value analysis, it is clear that the petitioners overstate the magnitude of the relative change in the comparisons between Haewon's sale and the CBP data. Specifically, regardless of the exclusion of certain types of entries within the CBP database advocated by the petitioners, the Department still finds that Haewon's U.S. sale was within a reasonable range, when compared to entries of subject merchandise from other manufacturers during the POR. Because most of the information pertaining to this issue is considered business proprietary information (BPI), see the final results calculation memo for further discussion.

Comment 5: Timely Filing of the New Shipper Review

The petitioners contend that Haewon's new shipper review was not timely filed, and thus the Department should rescind it. The petitioners claim that Haewon had made a single U.S. sale in the semi-annual POR, and shipped the subject merchandise during the last days of the POR.²⁶ Given the shipment date of the subject merchandise and the method of transport, the petitioners assert that it is obvious that the subject merchandise would not have entered the United States before the normal POR. The petitioners assert that it was unreasonable for Haewon to file its new shipper review on February 28, 2007, and that Haewon's sale did not enter the United States until April 10, 2007, well after the end of the normal POR.²⁷ In other words, Haewon requested a review for a single sale that had not yet entered the United States at the time of the request.

Haewon rebuts the petitioners' claim that the new shipper review should have been requested in August of 2007, and should have been combined with the Department's pending administrative review that was requested in the same month.²⁸ Haewon asserts that under the Department's regulations, a new shipper review may be requested at any time within one year of the new shipper's first shipment. Haewon states that requests for new shipper reviews are not limited to any particular month.²⁹ Thus, Haewon cannot be faulted in any way for filing its request for the new shipper review.

Moreover, Haewon claims that the petitioners have failed to raise this issue in a timely manner. Haewon argues that the Department fully considered whether the new shipper review should be initiated based on Haewon's request in April of last year. The petitioners failed to

²⁶ See U.S. sales database.

²⁷ See Letter to the Department from Haewon, dated April 20, 2007; see also Letter to Haewon from the Department, James Terpstra, Program Manager, dated May 23, 2007.

²⁸ See Nucor's Case Brief at 2-7.

²⁹ See 19 C.F.R. 351.214(c) ("An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section."). Haewon notes that it was not involved in the entry of the merchandise it shipped to the United States and did not have knowledge of the date of entry at the time it requested this review. See Haewon's February 28, 2007, Request for New Shipper Review at 2 and also see Haewon's April 19, 2007, submission at 2. In such circumstances, Haewon argues that the relevant date was the date of Haewon's shipment.

present any comments at that time. In any event, Haewon asserts if the petitioners had presented arguments at an appropriate time, and if the Department had accepted them, it would not have meant that there would be no new shipper review. Instead, it would have meant that the Department would have been required to initiate the new shipper review based on Haewon request in September 2007.

Department's Position:

We agree with Haewon. The Department considered this issue when it initiated the instant new shipper review when it stated "...in light of Haewon's submission of the entry documentation and Haewon's timely filed questionnaire response, the Department has determined that it is appropriate to expand the normal period of review to include the entry and to continue the instant new shipper review." See the Department's May 23, 2007 letter to Haewon re: "Corrosion-Resistant Carbon Steel Flat Products from Korea: Antidumping New Shipper Review."

Haewon could have requested a new shipper review in either August or February (the anniversary month or the semiannual anniversary month, respectively) after it made its U.S. sale. As referenced in the Department's regulations, "The Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable)." See 19 C.F.R. 351.214(b)(2)(v)(d)(1) and section 751(a)(2)(B) of the Act.

Although Haewon's POR sale entered after the normal POR referred to in 19 C.F.R. 351.214(g)(1)(B), the Department has the discretion to extend the POR of a new shipper review, which could allow for a new shipper review of a respondent despite an entry arriving subsequent to the POR. See 19 C.F.R. 214(f)(2)(ii); see e.g., Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China 67 FR 52442 (August 12, 2002) (unchanged in final results). Therefore, we do not find that the issue of the timing of Haewon's U.S. entry is relevant to our determination of the commercial reasonableness of Haewon's U.S. sale.

COP Issues

Comment 6: COP/CV Data for an Inappropriate Period

The petitioners argue that a normal new shipper review initiated after the semi-annual anniversary month has duration of six months (i.e., August 2006 to January 2007).³⁰ However, because there were no entries during that period from Haewon, the Department extended the POR by three months to April 2007.³¹ Therefore, the petitioners argue that for this new shipper

³⁰ See 19 C.F.R. 351.214(g)(1)(B).

³¹ See the Department's May 23, 2007, letter from James Terpstra, Program Manager, to Haewon.

review, the POR encompassed nine months. The petitioners assert that Haewon deviated from the Department's normal costs reporting requirements and only reported costs from October 2006 to March 2007.

The petitioners assert that the Department should obtain full cost information for the nine-month POR. However, because the Department would be burdened and the time limits for completing the review would be tested, the petitioners argue that the Department should reverse its May 23, 2007, determination to extend the POR and elect to rescind the review.

Haewon refutes the petitioners' claims and it states that the cost data for the period from April to September 2006 was provided to the Department at the cost verification.³² Haewon states that at the Department's request, the cost data for this extended period was then included in the revised cost data file submitted on December 31.³³ Thus, the Department now has complete cost of manufacturing data for all of the periods for which it requested information.

Department's Position:

The Department disagrees with the petitioners. Haewon originally submitted cost of production for a six month period of the POR.³⁴ In order to test the reported cost data, the Department examined several additional months of Haewon's cost data during its cost verification of Haewon. As a result of this examination, the Department found that Haewon's reported cost information was consistent and representative of its cost of production for the twelve month period for which the Department had cost data. The Department has the relevant COP data for Haewon, therefore, there is no basis for rescinding the review.

Comment 7: Revision of Haewon's G&A and Interest Expense Ratios to Account for Tolling

The petitioners reference a calculation made by the Department in the Preliminary Results in which the Department excluded tolling transactions from Haewon's home market sales database because these transactions were not considered as Haewon sales by the Department. The petitioners assert that, in order to be consistent with the revision made to Haewon's home market sales data, the Department should also revise Haewon's financial ratios. In calculating COGS to be used as the denominator in the financial ratios, the petitioners argue that the Department should exclude the cost of the cold-rolled coil they toll processed.

Haewon argues that the petitioners fail to acknowledge that Haewon correctly allocated its G&A and financial expenses based on the total costs of the galvanization process performed by Haewon and that the cost of the ungalvanized steel coils are also included in Haewon's cost of manufacture (COM). Haewon disagrees with petitioners' assertion that allocating G&A and

³² See Haewon's January 15, 2008 Cost Verification Report at 7, and Exhibit 10-A at 15.

³³ See Haewon's December 31 Submission, Revised Sales and Cost Data, at Attachment 3.

³⁴ See Haewon's August 10, 2007 Section D Questionnaire Response at page 1, footnote 1.

financial expense over the “gross” COGS without netting the cost of ungalvanized coils acquired from its customer inflates the denominator of G&A and financial expense calculation. Haewon explains that the denominator of the G&A and financial expense rate calculations must equal the sum of the figures to which the expense is being allocated.

Department’s Position:

We agree with Haewon that we should not recalculate the G&A and interest ratios nor adjust the reported COGS. The transactions between Haewon and its customer at issue are sales of the foreign like product. Haewon bought cold-rolled coils and transformed them into galvanized products, taking title to the purchased cold-rolled coils. We have determined that the Department erroneously excluded these sales in the Preliminary Results. See the section entitled “Changes Since the Preliminary Results” in the accompanying Notice of Final Results of Antidumping Duty New Shipper Review. We agree with the petitioners that the COGS denominator used in the G&A and interest ratios should be consistent with the treatment of the sales at issue. Since we have determined that these sales are sales of finished goods and not toll processing, and have included them in the construction of normal value for the Final Results, we have used a COGS denominator in the G&A and interest ratios that includes the full cost of producing the galvanized coils. As Haewon purchases the coils, incurs processing costs and sells the galvanized coils as a finished product, we agree with Haewon that the full cost of producing the galvanized coil including the purchase price of the coil should be reflected in the cost of goods sold denominator used in the G&A and interest ratios.

The Department normally allocates G&A and interest expenses over the COGS for the respondent company as a whole. In doing so, we spread the company-wide G&A and interest expenses over the general production activities of the company as a whole.

This treatment is consistent with our longstanding practice. The statute at 773(b)(3)(B) and (e)(2)(A) directs the Department to calculate an amount for selling, G&A expenses, including interest expense, based on actual data pertaining to the production and sale of the product. The antidumping law does not prescribe a specific method for calculating the SG&A and interest expense rates. When a statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Department. Because there is no bright-line definition in the Act of what a SG&A expense is or how the SG&A and interest expense rates should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating SG&A and interest expenses. This consistent and predictable method is to calculate the rate based on the company-wide SG&A (interest) costs incurred by the producing company (highest level consolidated entity for interest expense) allocated over the company-wide actual cost of sales. This practice is identified in the Department’s standard section D questionnaire, which instructs that the SG&A and interest expense rates should be calculated as the ratio of total company-wide SG&A and interest expenses divided by cost of goods sold. See Section D Questionnaire, page D-14. This approach recognizes the general nature of these expenses and the fact that they relate to the activities of the company as a whole rather than to a particular product or production process.

See Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Mexico 66 FR 15832 (March 21, 2001) referencing “Issues and Decision Memorandum” from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to Bernard T. Carreau, fulfilling the duties of Assistant Secretary for Import Administration, comment 5, Notice of Final Determination of Sales At Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand 66 FR 49622 (September 28, 2001) referencing “Issue and Decision Memorandum “ from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, comment 7, Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Round Wire from Canada 64 FR 17324, 17333 (April 9, 1999) and Notice of Final Determination of Sales at Less Than Fair Value; Fresh Atlantic Salmon from Chile, 63 FR 31411, 31433 (June 9, 1998).

Accordingly, for the final results we calculated Haewon’s SG&A and interest expense ratios using the COGS as reported, with the exception of the Department's recalculation of Haewon's SG&A, as referenced in Comment 9 which follows.

Comment 8: Whether to Recalculate Interest Expenses

Haewon argues that the Department incorrectly increased its reported interest expense to account for losses on discounting of trade receivables. This is because, as explained below, expenses associated with this are already captured in the Department’s credit calculation. Thus, including them in interest expense effectively double-counts these expenses.

Haewon explains that the Department verified that some of its home-market customers paid for their purchases using promissory notes with a fixed duration. In some cases, Haewon did not wait until the promissory notes actually came due (and the customer actually made its payment) to claim the funds. Instead, Haewon presented the notes to the bank prior to the maturity date, and received an amount from the bank that was less than the face value of the promissory notes.³⁵

Haewon claims that it reported an imputed credit expense for home-market sales for the entire period from the date of shipment to the date the promissory note matured. It did not cut off the credit period when the note was presented to the bank and the payment was actually received by Haewon.³⁶ Consequently, the reported credit expense included the imputed cost for the customer’s delayed payment for (1) the period from the date of shipment to the date of presentation of the note to the bank, *and* (2) the period from the date of presentation of the note to the bank to the date of maturity of the note (when the customer made the payment on the note).

Thus, Haewon concludes that the inclusion of that discount in the net interest expense

³⁵ See Haewon’s January 15, 2008, Sales Verification Report (Sales Verification Report) at 13.

³⁶ Haewon asserts that this methodology for reporting imputed credit expenses is consistent with the Department’s long-standing practice.

will double-count an amount that has already been accounted for in the reported credit expense. Haewon asserts that the Department should correct this error in its final determination, and revise its calculations to exclude the amount of the discount on trade receivables from the interest expense calculation. Haewon further argues that by including the discount on trade receivables in the company's interest expense, "the Department has incorrectly transformed a sale-specific adjustment to the effective terms of payment into a general expense."³⁷

The petitioners assert that the Department's cost test and the margin program prevent double counting from occurring for this type of discount.³⁸ As a result, the petitioners explain that during the Preliminary Results, the double counting for this discount did not occur.

The petitioners explain that Haewon's decision to sell the promissory notes to a bank at a discount for cash, rather than waiting for the promissory notes to mature, incurred additional costs for the company in the form of the financing charges levied by the banks. The effect of this decision on Haewon's financing costs was no different than if Haewon had sought additional cash for its operations in the form of a conventional loan with the promissory notes serving as collateral. Therefore, the petitioners assert that the Department correctly concluded in the Preliminary Results that the cost of discounting the promissory notes was a cost of financing Haewon's operations.

Department's Position:

We agree with the petitioners. In the Preliminary Results, we determined that the loss on discounting of trade receivables was the equivalent of a financing expense, and as such, should be included in the financial expense rate. There is no double-counting of these expenses because they are not used in the same calculations. In the cost test, we compare home market prices, net of discounts and rebates, movement charges, and direct and indirect selling expenses, to a COP, which is composed of COM, G&A, and interest cost. We make no deductions for imputed expenses, i.e., imputed credit and inventory carrying costs in the calculation of home market price in the cost test. The second calculation arises when we compare U.S. prices with home market prices; part of this calculation involves making circumstance of sale adjustments for direct selling expenses, which includes the imputed credit expense we calculate. In making this calculation, the interest expenses included in the COP calculated for products sold in the home market is not included.

Because the interest expense in the COP and the imputed credit expenses used for circumstances of sale adjustment are used in different calculations that do not overlap, there is no double counting. As the petitioners' point out, the imputed credit expense calculated by the Department is not used in the cost test and thus there is no double counting. Consistent with the Department's normal treatment of such expenses, we will continue to include the loss on

³⁷ See Haewon's February 22, 2008, Case Brief at 3 (Public Version).

³⁸ See Preliminary Results and the Department's Preliminary Results Calculation Memorandum (Jan. 15, 2008) (Public Version).

discounting of trade receivables in the calculation of Haewon's financial expense rate in the final results. See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (October 25, 2007), and accompanying Issues and Decisions Memorandum at Company-Specific Comment 8.

Comment 9: Revised SG&A Expenses from Verification

Haewon asserts that during the verification of Haewon, it submitted a revised G&A expense calculation and that the Department should use the updated expense rate for the final. Haewon argues that the Department erred in the Preliminary Results in not using the revised SG&A expenses presented and verified at verification.

The petitioners argue that the Department should not accept Haewon's adjustments to its SG&A expense. The petitioners argue that Haewon has provided no support for these adjustments and, in fact, one of the claimed adjustments is contrary to the Department's long-standing practice. Further, the petitioners argue the fact that the amounts were traced during verification does not address the question of whether the adjustments are appropriate. The petitioners claim that the Department should modify these expenses for these Final Results by not reducing the SG&A by inclusion of certain revenues and excluding certain expenses. The petitioners explain that Haewon has provided no support for its claim that certain expenses should be excluded from its SG&A expense. The petitioners argue that it is the Department's long-standing practice to include these expenses in the calculation of a respondent's SG&A expense. Accordingly, the petitioners assert that Haewon's claimed adjustment for the certain expenses should also be rejected.

Department's Position:

The Department agrees with Haewon that we verified its revised SG&A expenses. We disagree with the petitioners and we agree with Haewon that it properly reported the inclusion of the certain revenues to its G&A calculation. However, we disagree with Haewon and we agree with petitioners to include the certain expenses to Haewon's G&A calculation. Thus, we have revised Haewon's SG&A calculation for the Final Results to include the certain expenses. Due to the proprietary nature of this issue, please see final results calculation memo.

III. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the Final Results and the final weighted-average dumping margins in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration